



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 22 2001

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER 9200.0-36

MEMORANDUM

SUBJECT: Fiscal Year 2001 Appropriations Conference Report Language on Contaminated Sediments

FROM: Elaine F. Davies, Acting Director *Elaine F. Davies*
Office of Emergency and Remedial Response

Barry N. Breen, Director
Office of Site Remediation Enforcement *[Signature]*

TO: Superfund National Policy Managers
Regions 1 - 10

PURPOSE

The purpose of this memorandum is twofold: to transmit key sediment-related portions of the fiscal year (FY) 2001 VA-HUD-Independent Agencies Appropriations Conference Report, and to request that EPA Regional Offices consult with Headquarters on cleanup decisions involving contaminated sediments for the remainder of this fiscal year.

BACKGROUND

As it has done for the past two fiscal years, the FY 2001 VA-HUD-Independent Agencies Appropriations Conference Report contains language addressing dredging actions as well as other "invasive" sediment cleanup technologies. The report again refers to a study conducted by the National Academy of Sciences (NAS) on sediment cleanup technologies. The Agency received this report on March 16, 2001 and intends to consider its findings carefully.

Below are sediment-related portions of the Appropriations Conference Report:

The conferees remain concerned regarding the Agency's plans to conduct certain dredging or invasive remediation technology activities while these matters remain under study by the National Academy of Sciences (NAS). The ...NAS study is

addressing dredging, capping, source control, natural recovery, and disposal of contaminated sediments, and is comparing the risks of each technology....

Accordingly, the conferees continue to direct the EPA to take no action to initiate or order the use of dredging or invasive technologies where a final plan has not been adopted prior to October 1, 2000 or where such activities are not now occurring until the NAS report has been completed and its findings have been properly considered by the Agency. As in previous years, exceptions are provided for voluntary agreements and for urgent cases where contaminated sediment poses a significant threat to public health.

In adopting this direction to the Agency, the conferees do not intend to prevent EPA from publishing, issuing, or taking public comment on specific proposed or draft remediation plans; but do encourage the Agency to take into account the NAS study when available as it goes through the above process. However, any such plans are not to be finalized until June 30, 2001 or until the Agency has properly considered the NAS report, whichever comes first.

In addition to the Appropriations Conference Report, the legislative history includes floor statements by individual members, several colloquies among members, and a signing statement.

ACTIONS

The FY 2001 Appropriations Conference Report differs substantively from prior year reports. Accordingly, this memorandum supercedes the guidance memoranda issued by our offices on May 17, 1999, and January 19, 2000, respectively. With this memorandum we ask that, for this fiscal year, EPA regions consult as early as possible with headquarters on the following cleanup decisions if they involve contaminated sediment dredging or other “invasive” remediation technology. The scope of this consultation request is different from the scope of the conference report language. We are asking for consultation as a matter of program management and this memorandum is not intended as an interpretation of what the conferees intended.

- Any ROD, ROD amendment, emergency response, time critical removal, or non-time-critical removal decision document. Please note: while emergency response actions are covered by this consultation requirement, we would not expect regions to delay such cleanups, but to contact Headquarters as circumstances allow. In cases where an action may be considered a “voluntary cleanup” we ask that regions discuss this determination this as part of their consultation.
- Any response action start for sediment cleanup actions selected prior to October 1, 2000.

As you continue to work toward cleanup at these important sites, OERR will serve as the main headquarters point of contact, and will coordinate with OSRE. Please contact OERR’s Rich Norris [norris.rich@epa.gov, 703-603-9053] to initiate a consultation. OSRE’s Karen Morley [morley.karen@epa.gov, 202-564-5132] will serve as her office’s contact.

We plan to address questions about how the Conference Report language may apply to specific sites on a case-by-case basis. Either Rich or Karen will be available to assist in dealing with issues related to this memorandum and the Conference Report language. After the Agency has had the chance to fully consider the final NAS report, we will be in a better position to decide whether modifications to this consultation requirement are appropriate.

cc: Steve Luftig
Elizabeth Cotsworth
Delia Scott
Tudor Davies
Tim Oppelt
Earl Salo
Jim Woolford